

AMENDMENT NO. \_\_\_\_\_

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**Signature of Sponsor**

**AMEND Senate Bill No. 2864**

**House Bill No. 2485\***

**FILED**

Date \_\_\_\_\_

Time \_\_\_\_\_

Clerk \_\_\_\_\_

Comm. Amdt. \_\_\_\_\_

by deleting all of the language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 68, is amended by adding Sections 2 through 15 as a new chapter:

SECTION 2. As used in this chapter, unless the context otherwise requires:

- (1) "Department" means the department of human services;
- (2) "Commissioner" means the commissioner of human services;
- (3) "Adult day care" means services provided to ten (10) or more adult recipients, for more than three (3) hours per day, by a provider of such services who is not related to such adult, pursuant to an individualized plan of care designed to maintain or restore each adult's optimal capacity for self-care through medical or social services; and
- (4) "Adult day care center" means a facility which provides adult day care services.
- (5) "Related" means, for purposes of this part a person who is related to the adult day care services recipient as a legal or biological parent, child, sibling, aunt, uncle, grandparent of any degree, or cousin to the third degree, or a step-parent, or a step-grandparent of any degree.

SECTION 3. (a) No person or any entity of any kind, public or private, shall provide adult day care in this state without first obtaining a license as provided in this chapter.

(b) If any person or entity appears to be subject to the licensing requirements of this part and is currently licensed by any other agency of state

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government, the commissioner shall consult with the head of such other state agency, and, if after such consultation, the commissioner determines that the services to adults which are provided by the person or entity are adequately regulated by the licensing requirements of that other state agency, then the commissioner may determine that no licensing of such person or entity by the department pursuant to this part shall be necessary.

SECTION 4. The department, prior to issuing a new license, shall secure from an appropriate law enforcement agency records of any criminal activity, other than minor traffic violations, of the administrator, program director, fiscal officer, direct care workers, and paid employees of the proposed adult day care center. The individual investigated shall pay for all expenses for securing such records. The department shall obtain the records each time these positions are to be filled. A past conviction of any crime, especially any crime involving misuse of funds or involving physical abuse shall, in the discretion of the department, be grounds for denial of a license.

SECTION 5. If an adult day care center is operated only by a municipality or county or by a nonprofit corporation, no part of the net earnings may lawfully inure to the benefit of any private shareholder or individual. An applicant for initial licensure as an adult day care center shall file with the department, pursuant to its regulations, an application on forms furnished by the department, which shall include, but not be limited to, the following:

(a) Evidence satisfactory to the department that the applicant, its directors, and officers, if the applicant is a nonprofit corporation, and the person designated to manage

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the day-to-day affairs of the proposed adult day care center are of reputable and responsible character.

(b) Evidence satisfactory to the department of the ability of the applicant to comply with the provisions of this chapter and of rules and regulations adopted pursuant thereto by the department.

(c) Such other information as may be required by the department for the proper administration and enforcement of this chapter.

SECTION 6. (a) The department may issue only a provisional license for any applicant for a license as an adult day care center which is not currently licensed by the department. Except as provided in subsection (d), the provisional license shall be limited to a maximum period of one (1) year, but may be for such shorter period as the department may determine.

(b) The provisional license shall be issued only if:

(1) The adult day care center and the applicant for licensure substantially meet the standards specified by this chapter and the regulations adopted pursuant to this chapter;

(2) No violation of this chapter or a regulation adopted under this chapter exists in the proposed adult day care center which jeopardizes the health or safety of the adults in the facility; and

(3) The applicant has adopted a plan for the correction of any existing violations which is satisfactory to the department.

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(c) The department shall not apply less stringent criteria when granting a provisional license pursuant to this part than it applies when granting a regular annual license.

(d) Within thirty (30) days prior to termination of the provisional license, the department shall conduct a full and complete inspection of the adult day care center, and, if the adult day care center meets all applicable requirements for licensure, a regular annual license shall be issued. If the inspection demonstrates that substantial progress in meeting the standards for operation of an adult day care center is demonstrated by the applicant prior to the expiration of the provisional license, the department may extend the provisional license for a period not to exceed six (6) months.

(e) If there has not been substantial progress in meeting the standards for operation of an adult day care center at the time of the inspection, or if the department determines upon an inspection made within thirty (30) days prior to the expiration of the six (6) month extension of a provisional license that full compliance with the standards for operation of an adult day care center has not been demonstrated by the applicant, no extension of the provisional license, and no regular annual license, shall be issued.

SECTION 7. (a) If during the period of any license issued by the department, it determines that the license issued to the adult day care center should be revoked because of failure to comply with the standards of this part or the regulations adopted pursuant to this part for the operation of such a center, the department may, after notice and an opportunity to show compliance with all lawful requirements for retention of the license, revoke such license upon

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sixty (60) days notice to the licensee or other person responsible for the day-to-day operation of the adult day care center.

(b)

(1) A license may be summarily suspended by the department if, pursuant to the provisions of § 4-5-320, the department finds in its summary suspension order that the public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, and that the order states what action must be taken by the licensee to immediately effect compliance with the licensing standards.

(2) The summary suspension order shall be reviewed by a hearing officer appointed by the commissioner within five (5) working days of the suspension order, excluding Saturdays, Sundays, and legal holidays, who shall make a written determination of whether probable cause exists for continuance of the suspension order after opportunity for response and an informal hearing before such officer by the licensee.

(3) The department shall adopt such other rules as may be necessary to provide due process procedures involving the licensing of adult day care centers which are consistent with law, and to accomplish the revocation, denial and suspension of license procedures as may be required by this part.

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SECTION 8. No applicant which is licensed as a health facility, community care facility, or clinic may be issued a license for an adult day care center while there exists a substantial, uncorrected violation of the statutes or regulations relating to such license.

SECTION 9. Each application submitted to the department for a new license or for the renewal of a license shall be accompanied by a fee. Such fee shall be paid annually and shall be the same as the fee set by Section 71-3-506(b)(3) for applications for day care centers.

Any adult day care center which is operated by a public, non-profit agency or local municipality operating under a grant from the department of human services and which pays an administrative fine as part of the monitoring requirements of such grant shall be exempt from the licensure fee.

SECTION 10. (a) Each license issued or renewed pursuant to this chapter shall not be transferable to any other person or entity, and the sale, or transfer of the adult day care facility by any means, from the person or entity which is named as the licensee to any other person or entity shall require an application by the transferee for a provisional license and the payment of the required licensing fee. The adult day care center, the ownership or control of which has been transferred by the existing licensee, may not continue operation until a provisional license is granted to the transferee.

(b) The regular annual license shall expire twelve (12) months from the date of its issuance; provided, however, the commissioner may approve applications for relicensure of regular annual licensees as a biennial licensee. If a biennial license is granted, the commissioner may limit the biennial license to an annual license at the next renewal period. An

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application for an annual or biennial license shall be accompanied by the appropriate fee for an annual or biennial license and shall be received by the department not less than thirty (30) days prior to the expiration date of the license. Failure to timely submit a renewal application of a regular annual or biennial license, or for a regular annual license after issuance of a provisional license, shall result in expiration of the license.

SECTION 11. Immediately upon the denial of any application for issuance or renewal of a license or upon the revocation of any license, the department shall notify the applicant in writing. Not later than ten (10) days after the department mails the notice, the applicant may submit a written petition for a hearing to the department. Upon receipt by the department of the petition in proper form, such petition shall be set for hearing. The hearing shall be held within sixty (60) days of receipt of the petition. The proceedings shall be conducted in accordance with the Uniform Administrative Procedures Act, in Title 4, Chapter 5, with the department having all the powers granted therein to ensure:

- (a) Compliance with regulations adopted pursuant to this chapter;
- (b) Continued demonstrated community need;
- (c) Conformity of the program to individual participants' assessed and reassessed needs and interests with particular attention to visual, auditory, and equipment needs;
- (d) Suitability of program changes to the community and participants served; and
- (e) Compliance with any requirements of law or regulations pertaining to fire and safety.

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**SECTION 12.**

(a) The department may conduct inspections of every licensed facility or suspected adult day care center. The evaluation method adopted by the department shall be published and distributed to each licensed adult day care center and any other interested person.

(b) Any duly authorized officer, employee, or agent of the department may, upon presentation of proper identification, enter and inspect any place providing adult day care at any time, with or without advance notice, to secure compliance with, or to prevent a violation of, any provision of this chapter or any regulation adopted hereunder. If refused entrance for inspection of a licensed or suspected adult day care center, the chancery or circuit court of the county where the licensed or suspected adult day care center may be located may issue an immediate ex parte order permitting the department's inspection upon a showing of probable cause and the court may direct any law enforcement officer to aid the department in executing such order and inspection. Refusal to obey such order may be punished as contempt.

(c)(1) If any complaint is made to the department concerning any alleged violation of the laws, standards or regulations governing an adult day care center, the department shall investigate such complaint and shall take such action as it deems necessary to protect adults in the care of such center.

(2) If during the licensing period the department discovers that an adult day care center is not in compliance with the laws, standards or regulations governing its



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operation, and if after reasonable written notice to the agency of the violation, the violation remains uncorrected, the department may place the licensed adult day care center on probation.

(3) Prior to placing the center on probation, the department shall give the center written notice by personal delivery, or by certified mail, return receipt requested, of the basis for its action. The center may appeal such action in writing to the commissioner within ten (10) days of the receipt of the notice. If timely appealed, the commissioner or the commissioner's designee shall hold an informal hearing concerning the proposed action. The hearing officer designated by commissioner shall issue a decision in writing within ten (10) days of the hearing. The decision of the hearing officer shall be final.

(4) If placed on probation, the center shall post a copy of the notice in a conspicuous place as directed by the department and with the center's license, and the center shall notify the responsible relatives or conservators or guardians of each of the adults in its care in writing of the center's status and the basis for the probation.

(5) If the center corrects the violation after being placed on probation, the department shall immediately remove the probationary status and the center shall not be further required to post any notice of probation and may notify the responsible relatives or conservators or guardians of the adults in its care of its corrected status. If the department determines that the violation has not been corrected, it shall notify the center in writing of the basis of its determination. The center may appeal as provided in subdivision (3). If the decision upon appeal is that the center should remain on

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probation, the center may then, notwithstanding any provision of law to the contrary, file a petition for judicial review of the decision of the hearing officer as provided pursuant to § 4-5-322 to the chancery court of the county where the center is located.

(6) The department shall maintain a record of the hearings held under subdivisions (3) and (5) and such record shall become the record for judicial review pursuant to subdivision (5).

(7) The provisions of this subsection shall be discretionary by the department, and shall not be a prerequisite to any licensing action to summarily suspend, or to deny, or revoke a license of an adult day care center.

(d) The department shall make available to all interested persons a list of all licensed adult day care centers and the services that each facility provides. Reports on the results of each inspection, evaluation, or consultation performed pursuant to this section shall be kept on file in the department, and all inspection reports, consultation reports, lists of deficiencies, and plans of correction shall be open to public inspection during regular business hours.

SECTION 13. The department shall require each adult day care center caring for ten (10) or more persons to have a governing board. The governing board of an adult day care center, having final authority and responsibility for conduct of the center, shall be comprised of four (4) or more persons. The governing board may include members who may be recipients of the services of the adult day care center, relatives of such recipients, or representatives of community organizations with particular interest in

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programs for the elderly. No member of the governing board, nor any member of the immediate family thereof, shall have any direct or indirect interest in any contract for supplying services to the adult day care center.

SECTION 14. Each adult day care center that files an affidavit with the department as of January 1, 1997, certifying that such facility is in existence and in operation shall have two (2) years to fully comply with the provisions of this chapter.

SECTION 15. The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

All rules and regulations promulgated to effectuate the purposes of this act shall also be reviewed by the senate general welfare, health and human resources committee and the house health and human resources committee.

SECTION 16. There is hereby established an advisory committee consisting of not less than seven (7) members appointed by the commissioner. The advisory committee shall assist the commissioner in implementing the provisions of this act. The advisory committee shall reflect the diversity of this state with respect to urban and rural areas, the three grand divisions, and the various ethnic groups of this state.

SECTION 17. The provisions of this act shall be null and void unless the general appropriations act provides an appropriation for the estimated first year's funding pursuant to Article II, Section 24, of the constitution of the state of Tennessee.

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SECTION 18. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 19. The provisions of this act are declared to be remedial in nature and the provisions of this act shall be liberally construed to effectuate its purposes.

SECTION 20. It is the intent of the general assembly that the provisions of this act, with the exception of the employment of one (1) employee to assist in the implementation of this act, be implemented within the existing resources of the department of human services.

SECTION 21. For the purpose of promulgating rules, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect on January 1, 1997, the public welfare requiring it.